

G. M. Talang and Others

Vs

Shaw Wallace And Co. and Anr

Civil Appeal No. 513 of 1963

(CJI P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

24.03.1964

JUDGMENT

DAS GUPTA, J. –

This appeal arises out of an industrial dispute as regards the age of retirement. The first respondent, Shaw Wallace & Co., was incorporated in January, 1946 as a Private Limited Company to take over the business of the partnership firm of the Shaw Wallace & Co., which had been doing business in India for about 60 years. In July, 1947 the Private Limited Company was converted into a Public Limited Company. The Head Office of the Company is at Calcutta. It has Branches in Bombay, Delhi and Madras. The general practice of the Company both at the Head Office and the Branch Offices appears to have been to retire its employees at the age of 55 though in certain cases the Company in its discretion permitted an employee to continue beyond that age. In September, 1959 an agreement was entered into between the Company and its employees at Calcutta under which the age of retirement was extended to 58 years subject to the employees passing a medical examination on reaching the age of 55. Shortly after this the Company's employees at Bombay raised a dispute regarding their retirement age. They claimed that no workman should be retired from service before he had completed 60 years of age. This dispute was ultimately referred to the Industrial Tribunal, Maharashtra. Before the Tribunal the Company resisted the workmen's claim but submitted that it was agreeable to introduce for its Bombay employees provisions similar to those which had been introduced by agreement for the Calcutta employees - retirement at the age of 58 subject to the employee passing a medical examination on reaching the age of 55.

The Tribunal has directed that the age of retirement should be 58 but the Company may in its discretion and with the express or implied consent of the employee concerned continue an employee after he attains that age. It is against this decision that the present appeal has been filed by the workmen.

As has already been noticed there is no dispute that the age of compulsory retirement should not remain at 55. The dispute is whether it should be fixed at 58 or at 60. It is interesting to refer in this connection to the information that has been collected by the Pay Commission (1957-59) as regards the pensionable ages prescribed under the Pension Insurance Schemes for employees generally or for industrial employees and under social assistance or universal schemes in forty-eight countries in 1954. According to this the pensionable age is 70 in two countries; 67 in another two; 65 in twenty-four, 60 in seventeen, 55 in two and 50 in one. Thus out of 48 countries for which information was available it was found that in 45 countries the pensionable age was fixed at 60 or more. As the Pay Commission Report pointed out :-

"This is particularly remarkable, considering that the countries differ widely in demographic constitution, levels of economic development, and climatic and social condition; and it indicates a virtual unanimity of competent opinion that balancing the various factors - physiological, economic and social - that are relevant, the normal working life should continue up to the age of 60, and may well go on up to 65 years.

It is undoubtedly more useful, however, and indeed essential for our present purpose to examine the trends in this matter in our own country and specially in the region in which the present dispute has arisen. In the delicate task of adjusting needs of the employees to the interests of the employers and what is even more important to the general interests of the country at large, industrial adjudication has to pay special attention to the prevailing practice in the industrial region concerned. If in any particular region employees have been successful in their claim for fixing the age of retirement at 60 this very success is bound to raise in others in the region similar expectations. Refusal of similar relief to them is likely to create discontent. It is the endeavour of industrial adjudication to prevent this. That is why on questions of age of retirement and hours of work and other similar matters industrial tribunals attach much weight to what has been done in other industrial concerns in the neighbourhood in recent times - whether by agreement or by adjudication.

In support of their demand for fixing the age of retirement at 60 the workmen tried to show that in recent years at least the tendency in comparable concerns in Bombay region has been to fix the retirement age at 60. The Chart which is marked Ex. U-5 mentions 50 concerns in which the age of retirement is 60. In several of these this age had been fixed as far back as 1950 while in the rest the age was fixed in later years, that is, between 1952 and 1961. The workmen claim that these showed clearly a tendency in the Bombay region to fix the age of retirement in comparable concerns at 60. Special emphasis was naturally placed on some decisions of this Court which contained pronouncements as regards the existence of such a trend. In *Imperial Chemical Industries (India) Private Ltd., v. The Workmen* [[1961] 2 S.C.R. 349] where the Tribunal has raised the age of retirement from 55 to 58 and both parties appealed, this Court pointed out that one of the documents on the record "would conclusively show that in Bombay the age of retirement is almost invariably fixed at 60 and not at 55". In an earlier decision of this Court in *Dunlop Rubber Co. Ltd., v. Workmen* [[1960] 2 S.C.R. 51] it had been urged that the employer was an All India concern and that changing the terms and conditions of service in regard to the age of retirement in one place might unsettle the uniformity and might have serious repercussions in other branches. The Court pointed out that though this was a relevant consideration its effect had to be judged in the light of other material and relevant circumstances, and that one of the important material considerations in this connection would be that the age of retirement can be and often is determined on industry-cum-region basis. The Court then took into account the fact that the Tribunal had found that in all the awards in recent times in various concerns in Bombay region the trend had been to fix the age of retirement at 60 years. It was mainly in view of this finding of the Tribunal that this Court refused to disturb the award fixing the age of retirement at 60 years. It is important to notice that the correctness of the Tribunal's finding that in all the awards in recent times in the Bombay region the trend had been to fix the retirement age at 60 years, was not challenged before this Court.

In the present case an attempt appears to have been made on behalf of the respondent Company to show that it was not correct to say that the trend in Bombay region had been to fix the age of retirement at 60. Reliance was placed for this purpose on the Chart Ex. C1. It appears that the respondent company wrote to the Bombay Chamber of Commerce to ascertain from its member-concerns as regards the age of retirement observed by them and the information received from some

of them was incorporated in this Chart. The workmen objected to this being received in evidence on the ground that the original letters had not been brought on the record. It is not however seriously disputed that the Chart correctly reproduces the information as regards the age of retirement given by the various concerns named there. We think therefore that the objection was rightly rejected by the Tribunal. This Chart shows the age of retirement for 75 concerns. In most of the cases the age of retirement is shown as 55 and in a few at 58. At first sight therefore it appears to afford impressive testimony against the workmen's case that the recent trend in Bombay has been to fix the age of retirement at 60. But on a closer examination it is clear that this document is of little assistance for finding out the recent trend. There is no indication at all as to how long ago the age of retirement in these concerns was fixed at 55 or at 58. The Statement filed by the workmen to explain this Chart shows that in two of these cases, viz., Ingerzoll Band and Northern Assurance Co., the demand for fixing the age of retirement at 60 years is under negotiation. Exhibit U-6 also shows that in 25 of these concerns the clerical and subordinate staff were not organised into trade unions. There is this good ground for thinking that the reason why these concerns have kept the age of retirement at 55 or 58 are special to them and do not show any recent trend in the matter. In spite of these infirmities this document, Ex. C1, appears to have impressed the Tribunal. The main difficulty in accepting the Company's case on this point, viz., the pronouncements of this Court, however, remained. So, the Tribunal considered it to be its duty to enquire whether the conclusion recorded by this Court in some of its earlier decisions as to the relevant trend in the Bombay region was accurate. Having embarked on this enquiry, the Tribunal appears to have taken considerable pains to program this duty and it has ultimately persuaded itself to hold that no such trend is established in fact. We ought to add in this connection, that the approach adopted by the Tribunal in dealing with this aspect of the problem is not very commendable, and that its present conclusion that what was said by itself on an earlier occasion and was confirmed by this Court in appeal, was in fact inaccurate, is on the whole unsound.

If this Court had erred in making those pronouncements we would be the first to admit such mistakes and to correct the error. After careful consideration of all the materials placed on this record, we have, however, found nothing to justify any doubt about the correctness of what was said on the earlier occasion. On the contrary, the awards the agreements on the question of age of retirement about which information is furnished by the several documents on this record clearly show a consistent trend in the Bombay region to fix the retirement age of clerical and subordinate staff at 60. The very few departures from this practice which the Tribunal had mentioned are, in our opinion, wholly insufficient to indicate any slowing down of this trend. What the Tribunal has failed to notice is that instances which may justify a revision of the judicial opinion expressed on an earlier occasion about a particular trend must be strong and unambiguous and they must speak for the period both before and more particularly after the previous finding had been recorded in the matter.

Notice has also to be taken in this connection of the Report of the Norms Committee in which the following opinion was expressed :-

"After taking into consideration the views of the earlier Committees and Commissions including those of the Second Pay Commission the report of which has been released recently, we feel that the retirement age for workmen in all industries should be fixed at 60. Accordingly, the norm for retirement age is fixed at 60".

This considered opinion of a Committee on which both employers and employees were represented emphasised the fact that in the Bombay region at least there is a general agreement that the age of retirement should be fixed at 60. The Tribunal has referred to these observations, but has brushed

them aside in a way for which we find no justification.

On a consideration of all the facts and circumstances disclosed by the oral and documentary evidence on this record, we have come to the conclusion that the age of retirement of the appellant-workmen should be fixed at 60.

Accordingly, we allow the appeal with costs, and in modification of the award made by the Tribunal direct that the age of retirement for the workmen of the respondent be fixed at 60.

Appeal allowed.

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